



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Government of Harford County, Maryland

File: B-283259; B-283259.3

Date: October 28, 1999

James J. McCullough, Esq., Joel R. Feidelman, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, and Robert S. McCord, Esq. Government of Harford County, Maryland, for the protester.

Howard S. Stevens, Esq., and Douglas G. Worrall, Esq., Wright, Constable & Skeen, for the City of Aberdeen, Maryland, an intervenor.

Vera Meza, Esq., and David Scott, Esq., U.S. Army Materiel Command, for the agency. Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office has jurisdiction to consider protest where, notwithstanding the concomitant sale of government property, one of procurement's main objectives was acquisition of potable water and wastewater treatment services to Army for a 10-year period.
2. Protest that agency improperly required a particular technical approach and that neither solicitation nor discussions alerted protester to the evaluation impact of not proposing that approach is denied where protester was aware that solicitation, which stated that this particular technical approach would be the subject of the second most heavily weighted evaluation factor, was silent as to evaluation impact of not adopting the approach, yet protester did not file a timely solicitation challenge; even assuming agency error in this part of evaluation, it did not prejudice protester's chances of receiving award.
3. Protest that awardee's proposal contained material misrepresentations that were relied upon by agency in evaluating proposals is denied where examination of the awardee's proposal reveals no misrepresentations.

DECISION

The Government of Harford County, Maryland (the County) protests the award of a contract to the City of Aberdeen, Maryland (the City), by the Department of the Army, pursuant to request for proposals (RFP) No. DAAD05-98-R-0524. The protester contends that the evaluation of proposals was unreasonable, that discussions with it were inadequate, and that the City made material misrepresentations in its proposal.

We deny the protest.

Issued on February 27, 1998, the RFP solicited offers from public utility concerns for the purchase of Aberdeen Proving Ground's (APG) water and wastewater treatment facilities and for provision of potable water and wastewater services.¹ The RFP contemplated the sale of APG's water treatment facilities and its wastewater treatment facilities to one utility concern pursuant to the Army's "Privatization of Government-owned Utility Systems" initiative. RFP §§ C.1.1, C.2 (water), C.2 (wastewater). The RFP also contemplated the award of one 10-year contract (with automatic renewal for successive 5-year periods) for both potable water and wastewater services from the utility that purchased the APG water and wastewater treatment facilities.² Id. §§ C.1.1, C.13, L.9. The RFP stated that both potable water and wastewater services were to be provided to APG on a "cost of services" basis. Id. §§ B.2, H.1 (water), and H.1 (wastewater).

The RFP stated that the contract would be awarded to the offeror whose proposals were technically acceptable and offered the best overall value to the government,

¹The RFP contained three sets of provisions applicable to: (1) both water and wastewater treatment services and facilities; (2) water treatment services and facilities alone; and (3) wastewater treatment services and facilities alone. Consequently, the RFP included the same or similar provisions in more than one place. Henceforth, citations to the RFP will include "(water)" where the citation is to a water treatment services and facilities provision and "(wastewater)" where the citation is to a wastewater treatment services and facilities provision; if the cited RFP provision applies to both water and wastewater treatment services and facilities, the citation will include no parenthetical notation.

²Alternatively, the RFP stated that two separate utility services contracts--one for potable water and one for wastewater treatment--would be awarded to a single utility. RFP § L.8.

price and other factors considered.³ RFP amend. 2, § M.2.2. In descending order of importance, the technical evaluation criteria for both wastewater services and potable water proposals were: (a) technical and management approach; (b) conceptual plan for joint use; (c) comparable experience; and (d) financial capability. The RFP stated that “conceptual plan for joint use” and “technical and management approach” were significantly more important than “comparable experience” and “financial capability,” that “technical and management approach” was slightly more important than “conceptual plan for joint use,” and that “comparable experience” was slightly more important than “financial capability.” The RFP stated that all evaluation factors combined were significantly more important than price. Id. § M.2.1. The RFP also stated that price would not be point-scored and would increase in importance the closer the final evaluated technical scores were to one another. Id. § M.2.2.

Three proposals were received by the June 24, 1998 closing date, and negotiations were held with all three offerors.⁴ Best and final offers (BAFO) were received in November 1998, and evaluated by the agency. Agency Report, Tab D, exh. 35, Price Negotiation Memorandum, at 1-2. The County’s BAFO received a total technical evaluation score of 161 points (out of a possible 200 total points) at a total price of \$1,541,710, while the City’s BAFO received a total technical score of 195 points at a total price of \$1,381,938. Agency Report, Tab D, exh. 36, Debriefing Harford County Government, at 7. The technical scores of the two proposals were in a virtual tie (with a one-point advantage to the County) except for the “conceptual plan for joint use” factor; under that factor, the City received a perfect score (35 points), while the County received zero points, because it did not submit a conceptual plan for joint use. The evaluation team recommended that the contract be awarded to the City because its proposal was the highest rated on technical merit and its proposed price was the lowest; the contracting officer concurred. Agency Report, Tab D, exh. 35, supra, at 3-4; Agency Report, Tab D, exh. 36, supra, at 7, 10. On July 8, 1999, the contract was awarded to the City. The County was debriefed and protested shortly thereafter.⁵

³Separate proposals were required for wastewater services and potable water services. RFP §§ L.11, L.12.

⁴Only the evaluations of the protester’s and the awardee’s proposals are germane to the protest; thus, evaluation of the third offer will not be discussed in this decision.

⁵On July 23, the contracting officer issued a stop work order to the City of Aberdeen.

At the outset, the Army asserts that we have no authority to resolve this protest because the RFP was for the sale or transfer of government property.⁶ Therefore, the Army contends that this is a nonstatutory protest which we may not review absent the consent of the Secretary of the Army (see 4 C.F.R. § 21.13(a) (1999)), which has not been given. Agency Request for Dismissal at 1-2. We disagree. Under the Competition in Contracting Act, 31 U.S.C. § 3551(1) (1994), our Office has authority to review protests concerning the procurement and award of contracts for property or services by a federal agency. It is clear from the plain language of the RFP that the procurement had a dual purpose: (1) to transfer ownership of APG's water and wastewater facilities to a regulated utility and (2) to contract with the utility to which APG's water and wastewater facilities were transferred for the provision of water and wastewater treatment services to APG for a 10-year period. RFP §§ B, C.1.1, C.1, C.19 (water), and C.1, C.23 (wastewater). Moreover, it is undisputed that APG will continue to need potable water and wastewater treatment services and will acquire such services under the contract awarded pursuant this RFP to the transferee. In this regard, the prices at issue in this protest (*i.e.*, the offerors' prices set out above) are prices that the government will pay to acquire services (rather than prices that the government will receive, as in a sale of government property). We also note that the Army invoked the authority of 10 U.S.C. § 2304(c)(1), a procurement statute, as its authority for procuring the services from a limited number of responsible sources. Agency Report, Tab D, exh. 10, Justification Review Document for Other Than Full and Open Competition, at 6. Because one of the main objectives of the RFP was to obtain water and wastewater services, we conclude that we have jurisdiction to hear the protest. See Ship Analytics, Inc. Dist. 2; Marine Eng'rs Beneficial Ass'n--Recon., B-227084.3, B-227084.4, Dec. 15, 1987, 87-2 CPD ¶ 590 at 2.

Basically, the County protests that the evaluation was unreasonable and not in accord with the RFP's stated scheme and that negotiations with it were inadequate. The protester specifically contends that the agency incorrectly downgraded its proposal under the "conceptual plan for joint use" factor--giving it zero of the 35 points available--for not including a conceptual plan for joint use of wastewater facilities and that discussions with it on this perceived deficiency were inadequate. The protester also alleges that the Army improperly converted the RFP's "best value" evaluation scheme to a "low cost technically acceptable" scheme by rating both the County's and the City's proposals at or near the maximum available scores in the evaluation of the "technical and management approach" and "financial capability"

⁶The Army transferred title of APG's water and wastewater treatment facilities to the City of Aberdeen pursuant to 10 U.S.C. § 2688(a) (Supp. IV 1998), which authorizes conveyance of a government-owned utility system to certain types of non-federal utilities. Such conveyance is required to be carried out through the use of competitive procedures where, as here, more than one utility has expressed interest in obtaining the utility systems. 10 U.S.C. § 2688(b).

factors, notwithstanding the (alleged) fact that the protester's proposal was clearly superior to the awardee's in both areas of the evaluation. The County also asserts that the City made a number of material misrepresentations in its proposal.

Our Office will question an agency's evaluation of proposals only if it lacks a reasonable basis or is inconsistent with the RFP's stated evaluation criteria. DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95 at 4. Despite concerns about the handling of this matter, discussed below, we do not find that either the evaluation of proposals or the conduct of discussions provides a basis to sustain the protest here.

The protester contends that its wastewater services proposal was unfairly downgraded because it did not include a conceptual plan for joint use. The County points out that a joint-use plan was optional, at the discretion of the offeror, under the terms of the RFP. Therefore, the County asserts that the technical evaluation panel's (TEP) downgrading its wastewater proposal for not including such a plan was inconsistent with the RFP's terms. The protester further contends that, assuming for the sake of argument that its proposal was deficient in this area, then the discussions were misleading because they did not inform it that the Army required it to propose a joint-use plan. Initial Protest at 10-13.

Concerning joint use of wastewater facilities, the RFP's proposal preparation instructions stated, in relevant part:

Offerors may present a conceptual plan for any feasible joint use of all or portions of the acquired wastewater system to serve the general public, or the use of any of the Offeror's current or expanded facilities to provide wastewater utility service to the Installation.

RFP § L.11.2.5 (wastewater). The RFP also described the key elements that a conceptual plan for joint use should address, including, among other things, "a rationale on why such joint use is needed (or desirable) and would be mutually beneficial to the Offeror, the Government and the general public." Id. The RFP included similar provisions regarding joint use of potable water treatment facilities. Id. § L.12.2.5.

The County included a plan for joint use of facilities in its initial potable water proposal, but not in its initial wastewater proposal. Agency Report, Tab D, exh. 38, Harford County Technical Proposal for Potable Water Utility Service, at 41-43; Agency Report, Tab D, exh. 39, Harford County Technical Proposal for Wastewater Utility Service, at 46. The TEP awarded the County's potable water proposal 35 points (out of 35 available points) but, because the wastewater proposal included no joint-use plan, the TEP awarded it zero points under the "conceptual plan for joint use" factor. Agency Report, Tab D, exh. 14, Initial Evaluation (Harford County's Proposals), at 1. The contracting officer sent the County a letter listing deficiencies the TEP found in its potable water and wastewater proposals. Agency Report,

Tab D, exh. 20, Letter from Contracting Officer to Protester (October 21, 1998). No deficiency was listed concerning the County's potable water proposal's joint-use plan. However, the "deficiencies" letter listed several deficiencies in the County's wastewater proposal, including:

d. CATEGORY: Conceptual Plan for Joint Use of Facilities.

In part 5 the proposal stated no new connections are proposed at this time. If you have future plans for new connections, I suggest you submit a conceptual plan.

Id. at 2. The County responded that it "has no plans to offer wastewater service outside the boundaries of the APG area" and did not revise this area of its proposal. Agency Report, Tab D, exh. 21, Harford County's Response to Questions, at 4. Based upon the County's responses to the "deficiencies" letter, the TEP upgraded the County's proposals' scores under most evaluation factors but, because the County did not revise its wastewater proposal to include a joint-use plan, the TEP did not change the zero-point rating it had given the wastewater proposal under the "conceptual plan for joint use" factor. Agency Report, Tab D, exh. 24, Revised Summary Rating Worksheet (Harford County), at 1-2.

We agree with the protester that, as the agency actually evaluated proposals, an offeror that did not propose a joint-use approach had little realistic prospect of award, notwithstanding the RFP language indicating that a joint-use approach was not mandatory. In this regard, the agency did not state its needs and its preferences clearly. We also agree with the protester that the discussion question quoted above did not eliminate the lack of clarity, since it suggested that the offeror submit a conceptual plan if (which the County read to mean "only if") the offeror had future plans that would entail joint use. Nonetheless, we do not believe that the record provides a basis to sustain the protest.

First, the protester was on notice of the importance that the agency attached to submission of a conceptual plan for joint use. As noted above, the RFP listed "conceptual plan for joint use" as a technical evaluation factor and indicated that it was the second most important evaluation factor for both potable water and wastewater treatment proposals. RFP amend. 2, §§ M.2.1, M.2.2. Reading the RFP's proposal preparation instructions in conjunction with the RFP's evaluation scheme, it should have been clear to offerors that the agency was interested in obtaining proposals for joint use of facilities, where joint use was feasible, and would accord great weight to joint-use plans in the evaluation. While the protester is correct that other language of the RFP indicated that offerors were not required to propose joint use, the RFP was silent about how the agency would rate proposals that were not premised on joint use. We would note that nowhere in the extensive pleadings it submitted has the protester pointed to an RFP provision that the protester believes indicated how the agency would evaluate a proposal under the heavily weighted "conceptual plan for joint use" factor, if an offeror did not propose joint use. To the

extent that the protester believes that the RFP should have provided that such proposals would receive full credit (i.e., 35 points) under this factor, it is raising a defect, or a patent ambiguity, in the solicitation for the first time after award, and such a challenge is untimely. 4 C.F.R. § 21.2(a)(1); Motorola, Inc., B-277862, Dec. 3, 1997, 97-2 CPD ¶ 155 at 7.

Second, the record indicates that even acceptance of the protester's argument would not affect the outcome of the competition. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996). Here, as noted above, the protester's technical score was 34 points lower than the awardee's, and its price was somewhat higher than the awardee's. Because of this context, a change in the assignment of points under the "conceptual plan for joint use" factor would have no possible impact unless the protester were to receive every one of the 35 points available under that factor. Yet, in our view, nothing in the protester's arguments would preclude the agency from assigning somewhat more points to a proposal such as the City's--a good proposal for joint use, with a fallback proposal without joint use--than to one such as the County's--a good proposal that offered only non-joint use. Indeed, even assuming, arguendo, that the agency should have assigned the County all 35 of the available points, this would simply create a virtual tie between the two proposals (albeit with a one-point advantage to the County), and in that situation, and in light of the awardee's lower price, we believe that the agency could still reasonably have selected the proposal that included the joint-use arrangement. Accordingly, we do not believe that any error in the agency's evaluation under the "conceptual plan for joint use" factor prejudiced the protester's chances of receiving award.⁷

The protester next contends that the Army evaluated proposals improperly under the "technical and management approach" and "financial capability" factors. The

⁷We note as well that the record indicates that the protester would not have offered a favorable joint-use arrangement, even if it had known that the agency preferred that. The County elected not to propose a joint-use plan for wastewater treatment (although it proposed one for potable water facilities) because its wastewater treatment plant is so far away from APG that the cost of moving wastewater to the County facility for treatment would exceed any projected cost savings that otherwise might be realized from the joint use of facilities. Protester's Comments at 19-20. Nothing in the record suggests that the County could have devised a desirable joint-use arrangement for wastewater, even if the agency had been clearer, either in the solicitation or the discussions, about its preference for one. To the contrary, the County states that, had it submitted a joint use plan, its "conceptual plan for joint use for wastewater actually would have been less advantageous to the Army than its base proposal." Id. at 22.

County alleges that the TEP unreasonably rated its proposal and the City's at or near the maximum available scores under these two factors, when in fact the County's proposal was clearly superior to the awardee's in both areas, thereby converting the RFP's announced "best value" evaluation scheme to a "low cost technically acceptable" rating scheme. Initial Protest at 13-14.

Essentially, the County alleges that the agency used a pass/fail grading system in its technical evaluation, giving the highest possible ratings to any proposal that was technically acceptable, so that cost became the determining factor in the selection decision. While the protester limits its argument to the two evaluation factors that it believes best support its protest, we have reviewed the entire evaluation record, including evaluation of the two factors cited by the protester, and found that it does not support the protest.

The record shows that the individual TEP members evaluated proposals on a number of elements within each evaluation factor, made narrative comments on many features (both positive and negative) of the proposals, and gave proposals point scores reflecting their individual assessments of relative technical merit under each factor. The TEP then arrived at a consensus rating score and made narrative comments for each proposal under each evaluation factor. See generally Agency Report, Tab D, exh. 14, supra, and exh. 15, Initial Evaluation (City of Aberdeen's Proposals). Thus, it is clear that the TEP did not limit its review to whether a proposal was merely acceptable under each evaluation factor.

For example, in evaluating "comparable experience," the TEP downgraded the City's initial wastewater proposal slightly, giving it 14 of 15 available points, because the City's experience was limited and the proposal did not address lift capacity; the TEP downgraded the City's initial potable water proposal more heavily, giving it only 10 of 15 available points, because the City's experience was limited to its own small capacity system and was also limited to a groundwater source (i.e., wells) rather than surface water. Agency Report, Tab D, exh. 15, supra, at 1-2. When the City revised its wastewater proposal to address lift capacity during discussions, the TEP upgraded its wastewater proposal score, giving it one additional point; since the City did not revise its potable water proposal with regard to its limited experience, the TEP did not upgrade its potable water proposal score. Agency Report, Tab D, exh. 25, Revised Evaluation (City of Aberdeen's Proposals), at 1-2. Likewise, the TEP downgraded both the County's initial wastewater and potable water proposals slightly, giving them 13 and 14 points, respectively, for "comparable experience." Agency Report, Tab D, exh. 14, supra, at 1-2. When the County revised its proposals in response to concerns expressed by the agency during discussions, the TEP revised the County's scores upward to 15 points for each proposal under this factor. Agency Report, Tab D, exh. 24, supra, at 1-2. Clearly, the TEP did not merely examine the proposals to see if they passed some minimum level of acceptability.

A second example is the evaluation of “technical and management approach,” one of the two factors relied upon by the County in alleging that a pass/fail system was used. The TEP downgraded the City’s initial wastewater proposal slightly, giving it 38 of 40 available points, because it did not address union agreements; the TEP gave the City’s initial potable water proposal the full 40 points. Agency Report, Tab D, exh. 15, supra, at 1-2. The City addressed the agency’s concern regarding its wastewater proposal, and the TEP revised its score upward to reflect that revision. Agency Report, Tab D, exh. 25, supra, at 1. The TEP also downgraded the County’s initial wastewater and potable water proposals, giving them 36 and 35 points, respectively, because of several deficiencies found in each. Agency Report, Tab D, exh. 14, supra, at 1-2. When the County revised both proposals, satisfying most but not all of the agency’s concerns, the TEP revised its scores upward to 38 points for each proposal. Agency Report, Tab D, exh. 24, supra, at 1-2. This example again illustrates that the Army did not use a pass/fail system.

The protester asserts that its potable water proposal was clearly superior to the City’s, because the County proposed to use the County’s modern potable water treatment facilities, instead of APG’s “antiquated” water treatment facilities. The protester also asserts that its proposal was better since the City has never operated a surface water plant. Furthermore, the protester contends that the City’s only other water source, other than the APG facility, is the City’s well field, which cannot supply APG’s potable water demand if the APG water treatment facilities are inoperable or if water is needed during an emergency, such as a fire. Initial Protest at 14-15. The protester also asserts that both of its proposals should have received higher ratings than the City’s proposals under “financial capability” because the County has a better bond rating and more financial resources that it can draw upon to finance the purchase of APG’s wastewater and potable water treatment facilities. Id. at 16.

As noted above, we will question the agency’s evaluation of proposals only if it is unreasonable. DAE Corp., Ltd., supra, at 4. The protester’s mere disagreement with the Army over the technical evaluation of proposals does not establish that the evaluation was unreasonable. Cubic Applications, Inc., B-274768 et al., Jan. 2, 1997, 97-1 CPD ¶ 98 at 3. After reviewing the entire record, including the evaluation record, the agency report, and the briefs submitted by the parties, we conclude that the protester’s assertions merely represent its disagreement with the TEP and, therefore, provide no reason to find the evaluation unreasonable.

The record shows that the TEP believed that the City’s proposal to use APG’s existing water treatment facility represented “a sound technical solution” and noted that the City’s joint-use plan was technically and economically feasible. Agency Report, Tab D, exh. 15, supra, at 2. The TEP was also aware that the City, at its own cost, intended to provide approximately \$4 million to upgrade and expand the APG water treatment facility. Id.; Agency Report, Exh. D, Tab 18, Privatization Letter Report No. 6, at 4. Because the City proposed to modernize the APG plant, the

agency reasonably gave the City's proposal to use that APG plant an excellent rating. RFP § L.12.2.5. The record shows that the TEP was well aware that the City's experience was limited to its own groundwater source (i.e., a well system) and, in fact, the TEP reasonably downgraded the City's potable water treatment proposal under "comparable experience" because of it. Agency Report, Tab D, exh. 15, supra, at 2. The record also shows that the TEP considered the City's "A" bond rating and determined that it had no concerns about the City's ability to issue revenue bonds to finance capital improvements. Id. at 1-2; Agency Report, Exh. D, Tab 18, supra. In this regard, the agency reports that the City was determined to be fully capable of borrowing sufficient funds if needed and the contract is structured so that the utility can obtain low-risk financing. Contracting Officer's Statement at 6, 11-12; Agency Report at 4. Moreover, the Army plainly does not agree with the assertion that the City does not have sufficient water to meet its needs in emergencies or when the former APG water treatment plant is down. In this regard, the agency reports that the City can rely on several additional water sources based upon written and verbal agreements and past practice (see discussion below). Agency Supplemental Report at 3. The protester's mere disagreement with the agency on the technical merit of the proposals provides no basis for finding the evaluation unreasonable.

Finally, the County contends that the Army's evaluation and award decision were based upon material misrepresentations in the City's potable water proposal concerning its ability to provide potable water to APG in the event that the former APG water treatment facilities are down (for example, when improvements are being made) or in emergency situations (for example floods, droughts or fires). The protester contends that the City's proposal falsely represents that there are alternate water sources in neighboring jurisdictions that it can tap in emergency situations. The protester states that it has the only written agreement to provide the City with additional water and the amount of water that it is required to provide is not adequate for such emergency situations. The protester also asserts that, even if the City were able to produce written agreements with other municipalities for the supply of water, there would be no way for the City to get that water, except through the County's distribution system. Second Supplemental Protest, Sept. 7, 1999, at 12-19. This protest argument fails for several reasons, as discussed below.

The RFP required offerors to provide a conceptual plan showing how down-time and the need for emergency response, including fire protection, would be addressed. RFP § L.12.2.2(b). The City's potable water proposal stated that it currently manages its own (and that it intends to manage APG's) down-time and emergency water supply events "through the use of back-up equipment and agreements with the neighboring municipalities of Harford County and Havre de Grace." Agency Report, Tab D, exh. 40, City of Aberdeen Technical Proposal for Potable Water Utility Service, at 11. The proposal stated that in the event of a water quality emergency occurring at either the City's wells or the former APG water treatment facilities, the City would rely upon neighboring municipalities for help in meeting its and APG's water needs, if necessary. The proposal listed several potential water sources,

including the County, with which the City has agreements for additional water. Id. at 12. Regarding flood or drought emergencies, the proposal explained that existing agreements between neighboring municipalities and APG “will be solidified to insure an adequate, safe water supply for residents and businesses throughout the area”; stated that plans will be developed and lines of communication and agreements among the neighboring communities will be documented; and indicated that a public rationing plan would be developed. Id.

While we have sustained protests where the agency’s evaluation and selection relied upon representations made in the awardee’s proposal that specified resources were available, when, in fact, the awardee knew that those resources would not be available for contract performance, but failed to disclose that information to the agency before contract award, see, e.g., Dual, Inc., B-280719, Nov. 12, 1998, 98-2 CPD ¶ 133 at 3-6, we find no such misrepresentations in the City’s proposal. First, the RFP required only a conceptual plan for down-time and emergency response, but did not require the City to submit any written agreements with its potential additional sources for potable water. Thus, the City’s statements that it will make emergency plans and will solidify its existing agreements were sufficient to meet the RFP’s requirements. Second, the record shows that the neighboring municipalities have in the past helped each other by selling water to other communities, including the City and APG, in times of shortage. See, e.g., Agency Supplemental Report at 3; see also Intervenor’s Supplemental Comments, Sept. 29, 1999, at 3. In other words, past practice has been for the various sources of potable water to back each other up, and it is not relevant whether such cooperation was accomplished pursuant to written or oral agreements. Thus, the Army reasonably concluded that the City could handle down-time and emergency situations. Agency Supplemental Report at 3. Third, the protester’s argument is premised upon the former APG water treatment facilities being taken out of service when the City makes improvements to them. Second Supplemental Protest, Sept. 7, 1999, at 13. However, the City points out that it has not completed plans for making improvements to the APG facilities and that it may be able to make some improvements without taking those facilities out of service. Intervenor’s Supplemental Comments, Sept. 29, 1999, at 4-5. The City also points out that it will be able to maintain the water pressure needed for fire protection by using, among other things, the water stored in its elevated water tanks. Id. at 3. We cannot conclude that the representations made in the City’s potable water proposal were false or that the agency’s reliance upon them in determining that the proposal presented a “sound technical solution” was misplaced.

The protest is denied.

Comptroller General
of the United States